WHAT IS THE INTERNATIONAL OBLIGATION OF THE UNITED STATES, IF ANY, UNDER ITS TREATIES, IN VIEW OF THE BRITISH CONTENTION?

ADDRESS OF MR. AMOS S. HERSHEY, *Professor of Political Science and International Law in Indiana University.*

I find myself in a somewhat embarrassing situation. I fear that my answer to the question under discussion will take you over ground with which you are already familiar, so that you may feel that I have contributed nothing of novelty or essential importance to the discussion.

My reply in brief is this: Unless Congress sees fit to repeal that portion of the Panama Canal Act which exempts coastwise traffic from the payment of tolls, the United States is under an undoubted international obligation to enter into an agreement with Great Britain to arbitrate the controversy.

It may be that the United States is under the alternative international obligation of repealing the section of the Panama Canal Act referred to above, in accordance with Rule 1 of Article III of the Hay-Pauncefote Treaty, which provides:

> The canal shall be free and open to the vessels of commerce and of war of all nations observing these Rules, on terms of entire equality, so that *there shall be no discrimination against any such nation,* or its citizens or subjects, in respect of the conditions or charges of traffic, or otherwise. Such conditions and charges of traffic shall be just and equitable.

In respect to the proper interpretation of this rule, I am unfortunately in the position of a judge who has been so favorably (in some cases unfavorably) impressed with the arguments on both sides that he finds it difficult to render a decision. Besides, this question was so fully and ably treated yesterday that I feel certain I shall be readily excused from a further discussion.

However this may be, there is one international obligation resting upon the United States in the premises which scarcely admits of a reasonable doubt. This obligation is both legal and moral.

Article I of the convention between Great Britain and the United States, signed April 4, 1908, declares:

> Differences which may arise *of a legal nature or relating to the interpretation of treaties existing* between the two contracting parties and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration established at The Hague by the Convention of the 29th of July, 1899, provided, nevertheless, that they do not affect the vital interests, the independence, or the honor of the two contracting states, and do not concern the interests of third parties.

This treaty constitutes an undoubted legal obligation. It is a solemn compact between two great nations, and is as binding in law as are valid contracts between private individuals or corporations.

It cannot be successfully maintained that the Panama Canal tolls controversy falls within the scope of any of the above-named exceptions to the application of the Anglo-American arbitration treaty. Certainly the difference is not one affecting the "independence" or the "honor" of either state. Such a contention would be too absurd for serious argument. Nor will it be very seriously maintained that the difference is one affecting our "vital interests," whatever meaning may be given to this somewhat vague and apparently indefinable phrase. The phrase "vital interests" of course refers to questions of a far-reaching political, economic, or social nature. It might be justly held to apply to great issues involving considerations of such a national policy as the Monroe Doctrine or to fundamental economic and racial issues, such as were involved in the causes which led to the Anglo-Boer, Spanish-American, and Russo-Japanese Wars. But no proper construction of the phrase could possibly render it applicable to a question of exempting from tolls our coastwise trade.

Upon a first and superficial glance, it may seem as though this Panama tolls controversy falls under another exception to the application of the Anglo-American arbitration treaty. It may appear to be a difference which "concerns the interests of third parties." But a little reflection will lead to the conclusion that, while the interests of third states are doubtless affected in the sense that they may enjoy certain advantages or suffer certain losses in consequence of a decision favorable or unfavorable to Great Britain (as the case may be), their interests or rights are not directly concerned in the dispute itself. They are not parties to the suit.

Inasmuch as the arbitration treaty in question was only concluded for a period of five years from date of the exchange of ratifications,

it has been suggested that the United States may avoid her obligations, if any, to Great Britain by refusing to renew the convention upon its expiration in June, 1913. Even supposing the United States Government were willing to fly in the face of public sentiment and attempt to evade the issue in this disgraceful manner, it would probably be in vain; for the controversy would be regarded as having arisen prior to the expiration of the treaty, and the United States has agreed to arbitrate *existing* differences, *i. e.,* existing under the treaty, or while the treaty was still in force.

It has also been suggested that the Hay-Pauncefote Treaty is void or voidable on the ground that there has been a vital change of conditions since the treaty was made, the clause *rebus sic stantibus* being an implied condition in all treaties. This view, which assumes that a mere change in title-deed or transfer of territory constitutes a vital change of circumstances, appears to me trivial and therefore unworthy of serious refutation. Besides, this contingency was expressly provided for in Article IV of the treaty, which declares:

> It is agreed that no change of territorial sovereignty or of the international relations of the country or countries traversed by the before-mentioned canal shall affect the general principle of neutralization or the obligation of the high contracting parties under the present treaty.

Having demonstrated, as I think, that the obligation to arbitrate the Panama Canal tolls controversy is a legal one, it remains to show that it constitutes a moral obligation as well. In so doing I shall take the liberty of drawing still more largely than I have hitherto done upon a pamphlet of mine recently published by the American Association for International Conciliation.

The United States has been the consistent champion of international arbitration ever since this ancient practice was revived in modern times by the Jay Treaty of 1794. Among the many arbitrations to which this country has been a party, might be indicated various important boundary disputes, the Alabama Claims and Bering Sea controversies, and the Northwestern Fishery question (the latter involving an interpretation of Article I of the Treaty of 1898). As Professor Hyde has well said:

> The experience of the United States affords abundant evidence of the fact that if an international controversy is of a legal character, it is capable of adjustment by arbitration whether the claims involved are national or private; whether the issue is one of fact or of law; whether the difference is one concerning the ownership of land or the control of water; whether the honor of the state is involved, or even its most vital interests.[1]

At the First Hague Conference of 1899 the United States was particularly active in urging arbitration and assisting in the creation of the so-called Permanent Court of Arbitration at The Hague. Our government subscribed to the following declaration contained in the arbitration convention adopted at The Hague:

> In questions of a legal nature, and *especially in the interpretation or application of international conventions,* arbitration is recognized by the signatory Powers as the most effective, and at the same time the most equitable means of settling disputes, which diplomacy has failed to settle.

At the Second Hague Conference in 1907 the United States was one of the most vigorous advocates of a scheme for obligatory arbitration, and the American delegation proposed a project for a Court of Arbitral Justice which, if adopted, would have transformed the Hague Tribunal, or so-called Court of Permanent Arbitration created in 1899, into a real permanent High Court of International Justice, or Supreme Court of the Nations. Both schemes failed of adoption, but the contracting Powers represented at The Hague declared themselves "unanimous:" (1) In admitting the principle of obligatory arbitration; (2) In declaring that certain disputes, in *particular those relating to the interpretation and application of the provisions of international agreements,* may be submitted to obligatory arbitration without restriction. It is to be hoped that a convention providing for the establishment of a system of real international justice will be agreed upon at the Third Hague Peace Conference.

However, authorities on international law may differ in their views as to the possible scope of arbitration as applied to the settlement of international disputes, there appears to be a consensus of opinion

---

[1]Hyde, in 2 *Proceedings of the Second National Peace Congress* (1909), p. 232.

among them that interpretation of treaties is a proper subject for judicial determination. The rules for such interpretation are derived from general jurisprudence, and there is general agreement among the authorities as to the more important of these rules.

> The method of interpretation consists in finding out the connection made by the parties to an agreement between the terms of their contract and the objects to which it is to be applied. This involves two steps. One is to ascertain what has been called the "standard of interpretation"; that is, the sense in which the various terms are employed. The other is to learn what are the sources of interpretation; that is, to find out where one may turn for evidence of that sense."[2]

The main purpose of interpretation is to determine the real intentions of the parties. To this end diplomatic correspondence, or interchange and expression of views leading up to the final negotiation and ratification of the treaty, would be all important. For instance, the fact that an amendment was lost in the Senate providing that the United States should reserve the right to determine in respect to charges in favor of our own citizens, would not be decisive in itself. All the circumstances leading up to this vote would have to be taken into account. Besides, there are many other conditions surrounding the case, which would have to be considered, such, for example, as the bearing of the Clayton-Bulwer Treaty upon the Hay-Pauncefote Treaty, more particularly whether the latter treaty was the main consideration for the abrogation of the former, as, indeed, appears to have been the case.

It has been maintained that there are practical difficulties in the way of a just and impartial arbitration of this question, arising either from defects inherent in the arbitral system or from the alleged impossibility of finding judges who do not belong to interested nations.

It may be admitted that so-called courts or commissions of arbitration too often, in the past, have sought a solution of the controversy submitted to them by way of compromise, rather than through the application of legal principles to the case in hand. But in the administration of international justice during recent years great progress has been made in the direction of substituting better methods, higher

[2]Hyde, in 3 *American Journal of Int. Law* (1910), p. 46.

ideals, and more carefully selected judges for mixed commissions and occasional tribunals. Arbitral decisions are coming more and more to represent the application of principles of law and equity by trained jurists working in a judicial spirit instead of by arbiters animated by a mere desire to compromise the issue. In a word, in the settlement of international differences, more advanced judicial methods and a better judicial organization are taking the place of the older system of haphazard, compromising arbitration.

The defects in the arbitral system of the past have been due mainly to a want of care in the selection of judges, or to the lack of a carefully drafted agreement clearly defining the questions at issue and the rules of procedure to be observed. But none of these defects are beyond remedy, and the Hague Conferences of 1899 and 1907 have furnished us not merely with a better method of selecting judges than was previously in vogue, but also with an elaborate code of arbitral procedure which should prove adequate in most cases.

As to the alleged impossibility of finding fair and impartial judges to settle this particular disagreement, it may again be admitted that the difficulty is a real one. But we are here dealing with a difficulty—not an impossibility. It is true that all the maritime Powers of the world (including those of South America) are in a sense interested in the decision of this case. It has been suggested that "Switzerland is perhaps the only country capable of furnishing international jurists of high standing, who would probably be free from all pressure of selfish public opinion when acting as judges of the case."[3]

Switzerland could undoubtedly furnish them. So could many other countries, including Great Britain and the United States. In a tribunal composed wholly of arbitrators selected by the interested governments for the settlement of the Alaskan boundary dispute (1903), Lord Alverstone, the president of the tribunal, sustained the contention of the United States that it should continue to enjoy a continuous strip of mainland separating the British territory from the inlets of the sea. In nearly all countries of the civilized world there are today international jurists who, whether engaged in the practice of law at the bar, administering it on the bench, or holding chairs in our universities and law schools, possess the requisite knowledge, courage, and judicial spirit to declare and administer the law applicable to this and similar

[3] *The Outlook* for December 7, 1912.

differences of a legal nature. The time has, indeed, passed when it can be seriously maintained that such disputes are incapable of judicial solution. Least of all can the United States afford to refuse to settle such a controversy whether by arbitral or judicial methods.

The CHAIRMAN. Yesterday morning the discussion was quite comparable with the atmosphere. We trust that the whole question now before us may be open and that we may have some of the warmth of yesterday's discussion in the discussion of this morning. The question is open for discussion.

Mr. EDMUND F. TRABUE. Mr. Chairman, coming from the Ohio Valley, State of Kentucky, international law with us is almost academic. Nevertheless, we notice what is going on in Congress, and we cannot understand why a million dollars a year of our money should be given away for the purpose of teaching Great Britain that we are going to attend to our own affairs in our own way.

Now, taking up very briefly the points which have been raised.

Mr. Oppenheim, to whom Mr. Taylor has referred, has just published a little work upon the subject of these canal tolls, and has taken the position that we have no right to exempt the coastwise trade of the United States from the payment of such tolls, which neutralizes the authority of Mr. Oppenheim on the point for which he was cited by Mr. Taylor; but assuming that Mr. Oppenheim is wrong in claiming that the exemption of the coastwise tolls would raise the tolls to be paid by the other nations, and assuming, based upon Mr. Emory Johnson's statistics, that the tolls of other nations will not be raised, is it a sufficient answer to Great Britain, and more especially is it a sufficient answer to the people of the United States, who do not desire their money given away at such a rate, to say that because we may grant a bounty to any traffic, therefore we may exempt that traffic from tolls? Would not that argument be as applicable to the coastwise traffic of Peru, or Chile, or Brazil, or Argentina, if we should feel that it were to our benefit and our advantage to grant a bounty to the traffic of such countries? Could any foreign country claim that we have not the right to grant a bounty to such traffic; and would it follow that, because we had a right to grant a bounty to such traffic, therefore we might exempt that traffic from the payment of tolls? If so, where would the argument end, and what would become of the provision in our treaty for neutralization?

Responsive to Mr. Hannis Taylor's canon of treaty construction, that change of territorial dominion gives us a right to abrogate the Hay-Pauncefote Treaty, notwithstanding that treaty expressly provides the contrary, because our purchase of the zone was not contemplated when the treaty was made, it is obviously untenable, as would instantly appear if such a canon of construction were applied to the commerce clause in the Federal Constitution, for it would prevent the application of that clause to railroads, to the telegraph, the telephone, and the wireless, for none of these was within the contemplation of the framers of the Constitution.

We have heard here of the history of this treaty; that the Clayton-Bulwer Treaty was sought by the United States and not by Great Britain; then that it was modified upon the request of the United States, which sought the Hay-Pauncefote Treaty; that these treaties were simply the results of negotiations begun long previously, as far back as 1835 and even probably originating with the letter of Mr. Clay in 1826, with the representation throughout that the United States did not seek a selfish advantage to itself, but that the canal should belong equally to all the nations in the world.

Now, why shall we, at this day, when the whole world has taken us at our word, when we are accomplishing nothing by it except giving away a million dollars a year, go back upon our assurances for all past time? If we have a foot to stand on, we can certainly show it to a court of arbitration, and, as has been so well said here, this is not an occasion for the United States to depart from its traditional policy of arbitration.

The CHAIRMAN. Is there anyone else who desires to be heard?

Mr. EMORY R. JOHNSON. I do not wish to participate in this debate for a number of sufficient reasons, but I wish simply to correct a misapprehension. I have not said that the statistics of traffic and possible revenue indicate that the tolls should not be higher upon foreign shipping as a result of the exemption of the coastwise traffic; nor am I able to interpret my statistics as showing that the foreign shipments might not be charged higher tolls if American ships do not pay tolls.

Mr. TRABUE. I simply misunderstood Mr. Johnson, and I am glad to be corrected; but his statement just made further enforces my

proposition that with Great Britain, as with all other nations, competition is most important; so, regardless of the question of the size of the tolls, Great Britain and all other countries have that interest in the equality of tolls.

Professor N. DWIGHT HARRIS. It would be impossible to answer in a few moments the able arguments in at least two of the papers that have been read this morning. I think some of them are almost unanswerable; but there are just one or two points that occur to me, on which it might be interesting to speak, in the way of condensing our thought on what has been said.

Anyone who has read the debates in Congress and in the Senate concerning this Canal Bill, and particularly those on the amendment to the bill, which, by the way, came from the minority report and not from the majority, knows that the question was settled not at all from the standpoint of international law, and not at all from the standpoint of what might be a dignified attitude for the United States opening the canal to the interests and commerce of the world to pursue, but from the entirely selfish standpoint of what the people of the United States, at least assuming that Congress and the Senate of the United States represented the people of the United States at that time, felt that they wanted to do with their own canal. They proposed to do as they pleased concerning the use of the canal by United States vessels, and to interpret the treaty as best suited their own purposes.

Now, it was very unfortunate that Congress attempted to lay down a policy itself in this way. It hampered the State Department, which had not reached the point in their discussions with Great Britain as to know exactly where they were coming out, as we might say. But when Congress went to work and passed an amendment giving free passage of the canal to all vessels engaged in our coastwise trade, it embarrassed the State Department and put it in a very difficult position.

It seems to me that if Congress was reasonable in this matter and wished to put the United States in a position where it could handle the matter in the most diplomatic and most advisable way, a way which would redound to the interests of the United States as well as to the interests of international law, Congress should annul that amendment, so that the United States Government could have a free hand. I should like very much to see this done; and then, having a free hand,

it would be quite possible for the United States Government to take up the argument again with Great Britain in a very courteous and direct way, and to reach a satisfactory understanding upon the points in question, at least as far as it is possible to do so through the channel of diplomacy.

Now comes that very valuable suggestion which was made here today, and which was also made by that distinguished writer on international law—Mr. Westlake—that it is possible to arbitrate even a political question. It would, therefore, seem to be within the possibilities for the United States to submit to arbitration (if it appeared desirable, and a wise thing to do) the treaty some of the terms of which seem to be in doubt, or the interpretation of which it may not be possible for the two countries to come to a definite agreement upon.

So I think that, if we would let the State Department have an opportunity to work this problem out in a fairly scientific way, from the standpoint of international law, it would be possible for the whole thing to be amicably and legally and satisfactorily settled.

I thank you.

General PETER C. HAINS. Mr. Chairman and Gentlemen: I am a layman, but I have been very much interested in the discussion that has been going on here for the last two days in respect to the Panama Canal. It was my fortune to be on the original commission that recommended the Panama Canal route as the best one on which the United States should construct its canal. Subsequently, I was on the second commission, known as the "Constructing Commission," and did a little work, I hope, towards the prevention of the adoption of a sea level canal and the adoption of a lock-canal like the one they are now constructing.

At that time, I had occasion to look into the law as laid down by the Hay-Pauncefote Treaty, and I noticed that the word "neutralization" occurs three times in that treaty. Being a layman, I was anxious to find out just exactly what "neutralization" meant. I found on examining authorities—I do not know whether I was accurate or not in my finding—that a neutralized canal was the very reverse of neutralized territory. It was a canal that was free and open to all, and one which had no fortifications commanding the entrance. It seems to me that that is what "neutralization" meant at that time. I do not lose

sight of the fact that when the Suez Canal was neutralized by the Convention of Constantinople fortifications were forbidden, but "neutralization," according to the authorities, it seemed to me, meant a canal that had no fortifications to command it. Now, we are constructing fortifications there. Has the word "neutralization" reached a different meaning today from what it formerly had? If it has, when did it get that new meaning? The word "neutralization" is a comparatively modern word; but I would like to ask if there are any members of this Society who can tell me what "neutralization" means in the Hay-Pauncefote Treaty as it stands today, or is it true, as some claim, that the canal is not neutralized at all?

I just wanted to ask that question, that is all.

The CHAIRMAN. Can someone answer General Hains' question? Can you do so, Mr. Kennedy?

Mr. CRAMMOND KENNEDY. Mr. Chairman, I do not exactly see why you should ask me to answer it, but I will try to do it in a very few words.

The CHAIRMAN. The question is, What does the word "neutralization" mean? Perhaps, after Mr. Kennedy answers it, somebody else will desire also to give an answer.

Mr. CRAMMOND KENNEDY. To begin with, Mr. Chairman and gentlemen, I do not think, from the authoritative definitions of "neutralization," that the Panama Canal can be said to be neutralized in the true sense of the term. Let me read you, from the January number of our Society's *Journal*, a definition of neutralization by one of our most distinguished publicists, Dr. Thomas J. Lawrence:

> In ordinary neutrality are involved the two elements of abstention from taking part in an existing war and freedom to engage in it or not at pleasure. In neutralization the first element remains the same; but, instead of the second, there is imposed by international law either an obligation not to fight except in the strictest self-defense or an obligation to abstain from warlike use of certain places and things which have had the neutral character stamped upon them by convention. * * *
>
> As neutralization alters the rights and obligations of all the States affected by it, either their express consent, or the agreement of the Great Powers acting as in some sort their representa-

> tives, is necessary in order to give it validity. The word is often used in a loose and inaccurate manner to cover undertakings in abatement or mitigation of war, entered into by one or two States. We must therefore remember that there can be no true neutralization without the complete and permanent imposition of the neutral character by general consent. Thus Argentina and Chile could not impose an obligation on the rest of the world to refrain from warfare in the Straits of Magellan by declaring them neutralized, as they did by treaty between themselves in 1881.

That is the end of the quotation from Dr. Lawrence.
Now, here is a quotation from Dr. Holland:

> But an agreement between the States most directly interested may in practice amount to much the same thing, if they are powerful and determined, and covenant for the application of rules which have already received general consent in a similar case. The Treaty of 1901 between Great Britain and the United States for applying to the Panama Canal, when made, the rules of navigation now applied to the Suez Canal, is an illustration.

So you see that the word "neutralization" may be used in a qualified sense, and that in such a sense the Panama Canal may be said to be neutralized; but, as General Hains has observed, one of the characteristics of neutralized territory or waterways, although not an absolutely essential characteristic, is freedom from fortifications. Now, that placard which was exhibited here yesterday presented in large type not as it purported "The Treaty that was Rejected by the Senate," but the treaty that was communicated on February 5, 1900 by the President to the Senate, the treaty that was signed by John Hay and Sir Julian Pauncefote; and that treaty expressly prohibited fortifications, and the Senate consented to its ratification, after prolonged debate, with that prohibition in it, but the Senate also adopted the amendment to which Senator Morgan had objected.[1]

The next treaty, the one that is now in force, instead of re-enacting that explicit prohibition of fortifications, provides for what is really to my mind a more comprehensive neutralization. It ordains that

---

[1]This amendment, which caused the rejection of the first Hay-Pauncefote Treaty by Great Britain, provided: "It is agreed, however, that none of the immediately foregoing conditions and stipulations in sections numbered one, two, three, four and five of this article [II] shall apply to measures which the United States may find it necessary to take for securing by its own forces the defense of the United States and the maintenance of public order."

"the canal shall never be blockaded, nor shall any right of war be exercised nor any act of hostility be committed within it." Now, where have we drifted? We are at the moment constructing fortifications, just as if the first Hay-Pauncefote Treaty had never forbidden fortifications—a prohibition, as I said yesterday, which was consented to by the United States Senate—and just as if the second Hay-Pauncefote Treaty, the one now in force, had never declared that no right of war or act of hostility should ever be exercised in the canal. I want to read to you now just another sentence or two from an article which you will find in the AMERICAN JOURNAL OF INTERNATIONAL LAW for last January.[2]

"If a canal had been built and the United States and Great Britain had gone to war, while the Clayton-Bulwer Treaty was in force, the neutral state administering the canal would have allowed the public vessels of either belligerent to pass through the canal under the rules prescribed by the states guaranteeing its neutrality, just as the United States would do under the existing treaty, in its administration of the canal during a war to which it was not itself a party."

"But"—and here I come to one of the difficulties which probably will be adjusted—"the rules adopted by the United States in the Hay-Pauncefote Treaty, do not seem to have reserved to itself"—that is to the United States—"such belligerent rights as the changed conditions might have justified"—the "changed conditions" being our ownership of the canal and our exclusive control of it, subject, of course, to any obligations which we have incurred under the treaty.

Let me read this again:

> But the rules adopted by the United States in the Hay-Pauncefote Treaty, do not seem to have reserved to itself such belligerent rights as the changed conditions might have justified, but to have left it in the position where it would be bound to allow such free passage to ships of war of its enemy as the neutralized state, being the territorial sovereign of the Canal Zone, would have done under the original plan.

There is one thing further that I would like to read from the same number of the JOURNAL—a citation from Mr. Wicker's recent essay on "Neutralization":

---

[2] "Neutralization and Equal Terms," AMERICAN JOURNAL OF INTERNATIONAL LAW, January, 1913, pp. 47, 48.

> This treaty with England, which, however, does not amount to complete neutralization, since it is an agreement between two nations only, further provides that the canal is to be safeguarded and maintained in neutrality by the United States alone, and consequently is a compromise between neutralization and complete American control.

The earlier Hay-Pauncefote Treaty, as signed by Secretary John Hay and Sir Julian Pauncefote and submitted by President McKinley to the Senate on February 5, 1900, provided for a really neutralized canal. The canal, in the words of this treaty, was to be free and open, in time of war as in time of peace, to the vessels of commerce and of war of all nations; no fortifications were to be erected commanding the canal or the waters adjacent; and the high contracting parties, immediately upon the exchange of the ratifications of the convention, were to bring it to the notice of the other Powers and invite them to adhere to it.

The trouble is that the second Hay-Pauncefote Treaty was an attempt to make an adjustment of conditions to fit a plan that had been materially changed. The original conception of the interoceanic waterway was that, however or by whomsoever opened, it should be maintained for the commerce of the world, on equal terms, and permanently neutralized, like the Suez Canal, by agreement of the great Powers, for the promotion of peaceful trade between mankind.

Now, the result is, I think, so far, that it is a very qualified "neutralization," and perhaps it might be said that it is not neutralization at all, in its essential character, as defined by the publicists, that has been provided for the Panama Canal by the existing treaty, although the object of that treaty is declared in the preamble to be "to facilitate the construction of a ship canal to connect the Atlantic and Pacific Oceans by whatever route may be considered expedient * * * without impairing the 'general principle' of neutralization established in Article VIII of the Clayton-Bulwer Convention."

The CHAIRMAN. I thought I saw someone else who desired to give a definition of the word "neutralization."

Professor AMOS S. HERSHEY. Mr. Chairman and Gentlemen: I do not believe it is possible to give a definition of "neutralization," so I shall not attempt it. However, I believe that that word appears to be used in various meanings in various senses.

I think the use of the term originally applied, of course, to the neutralization of Switzerland and later Belgium and Luxemburg. That term afterwards seems to have been applied, to a certain extent, to international waterways, to certain rivers. I do not know just to what extent it was applied, but it was applied to rivers like the Rhine and Danube, and so forth; but there it seems to me to have meant the common use of such rivers, and I think that seems to be the primary meaning of it as applied to the Suez and Panama Canals.

Mr. CRAMMOND KENNEDY. Under the guarantee of the great Powers?

Professor HERSHEY. Yes, a certain degree of neutrality is guaranteed. We have some idea of that, of course, in the neutralization of Belgium and Switzerland and so forth.

Mr. KENNEDY. That is right.

Professor HERSHEY. But I remember that Lord Cromer suggested, in connection with his work on *Modern Egypt,* with respect to the Suez Canal, that a better term would be "internationalization," that there is a certain freedom of commerce and free use of those waterways by the world, with, perhaps, certain restrictions on belligerent rights.

The term has also been used, although I think it is now more or less abandoned, in treaties speaking of neutralization and seeking a *bounty* in warfare. That is another use of the term that is somewhat different from anything that we have in these other cases. So it seems to me that what we have is simply a word which is used in different senses. It has different meanings, and I do not believe it is possible to give a definition of it.

The CHAIRMAN. The whole subject is still open for discussion. Is there any further discussion?

Mr. A. S. LANIER. I would like to say in regard to the word "neutralization," Mr. Chairman, that there does not seem to be any definition of it at all, and no one seems to be able to give a definition,